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by any authority to which the authority giving or refusing it is subordinate. Sub-section (7) provides that for the purposes of the section every Court shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie.

In the present case the charges against Jokhu and Nand Lal were tried in the Court of a Magistrate of the third Class. Appeals from him ordinarily lie to the District Magistrate. In my opinion the application for sanction having been made to the Court in which the proceedings were had and in respect of which sanction to prosecute was asked, the only Court to which an application under clause (6) could be made to revoke or grant the sanction was the Court of the District Magistrate, and that the view taken by the learned Sessions Judge was a correct view. I accordingly dismiss the application.

APPELLATE CIVIL.

1907
December 2.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkitt.

GORDHAN DAS AND ANOTHER (PLAINTIFFS) *v.* CHUNNI LAL (DEFENDANT) *

Religious endowment—Trust—Uncertain—Income of villages to be applied to "charitable purposes" at a dharamshala which the settlor had founded.

By a deed of trust, or *bhentnama*, the owner of seven villages settled the income thereof to the extent of Rs. 500 a month to be applied to "charitable purposes" at a dharamsala which he had founded. In course of time one of the villages mentioned in the deed of trust was alienated by a person who was at the time acting as trustee. *Held*, on suit by the trustees to have the sale cancelled and to recover possession of the village, (1) that the trust was not void for uncertainty, and (2) that it was not competent to the court in the suit as framed to declare that the village in suit was charged with a proportionate part of the total income of the seven endowed villages. *Runchordas Vandravandas* v. *Parvatibai* (1) referred to.

THE facts of this case are fully stated in the judgment of the Court.

The Hon'ble Pandit *Sundar Lal* and Dr. *Satish Chandra Banerji*, for the appellants.

Babu *Jogindro Nath Chaudhri*, Mr. *M. L. Agarwala* and Lala *Kedar Nath*, for the respondent.

* First Appeal No. 199 of 1905, from a decree of Shankar Lal, Subordinate Judge of Agra, dated the 29th of June 1905.

(1) (1899) I. L. R., 23 Bom., 725.

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GORDHAN DAS v. CHUNNI LAL.

STANLEY, C.J., and BURKITT, J.—This is an appeal by the plaintiffs against a decree of the Subordinate Judge of Agra, in a suit brought by them as trustees for a declaration that certain property was endowed, and that the plaintiffs as such trustees might be put into possession of the village of Gauri, a portion of the endowed property. The Court below, while dismissing the plaintiffs' claim for possession, gave a declaration that mauza Gauri was charged with and subject to an annuity of Rs. 133-5-0 for the support of the alleged charity, and that the plaintiffs were entitled to realise this sum from the defendant during the continuance of the charity. Against this decree the plaintiffs have appealed. We have also before us an objection filed by the defendant respondent, under section 561 of the Code of Civil Procedure, the ground of objection being that the property is not endowed property.

The deed of endowment upon which the plaintiffs rely was executed by Rai Joti Prasad of Agra on the 20th of September 1861. In that document there is a recital that the executant had established a dharamshala at Benares for charitable purposes, and had carried on charity at a cost of Rs. 500 a month. Then it is recited that it was necessary to make a permanent arrangement for the continuance of the charity and for meeting the expenses connected with it, and that therefore the document was executed. In the operative part Joti Prasad purported to set apart the profits of seven villages, one of which is Gauri, for the expenses of the dharamshala and directed that the net profits of those villages should, to the extent of Rs. 500 a month, be applied to charitable purposes (*pun*) at the dharamshala and that the net profits of the villages should be deposited by way of trust with Bishambar Nath and Din Dayal or those whom they might appoint.

After the deaths of the trustees, their widows Rani Kanno Dei and Rani Hira Dei took upon them the management of the property comprised in the deed of endowment, and on the 12th of January 1903, Rani Hira Dei sold the village of Gauri to the defendant, Seth Chunni Lal, who is now in possession of it. By order of the 25th of January 1904, Hira Dei was removed from the office of trustee and the plaintiffs were appointed trustees of

the endowment. The suit out of which this appeal has arisen was then brought by them on the 17th of May 1904 and it is only concerned with the village of Gauri, the plaintiffs claiming possession of it alone. Seth Chunni Lal alone defended the suit, and his sole defence was that the property in dispute was not endowed property, and that the alleged deed of endowment was never acted on.

The learned Subordinate Judge held, and we think rightly, that only a portion of the profits, that is Rs. 500 a month, of the villages mentioned in the deed of endowment was dedicated for the purposes of the trust, and that the villages themselves were not vested in the trustees so as to entitle them to possession of them. The founder of the trust directed that the net profits of the villages to the extent of Rs. 500 a month only, and not the corpus, should be applied to charitable purposes, and be deposited by way of trust with the trustees. The plaintiffs, we think, are clearly not entitled to be put into possession of any of the villages. They are only entitled to receive Rs. 500 a month out of the profits of them. Their suit for possession was, therefore, misconceived. The learned Subordinate Judge came to the conclusion upon the evidence that Rs. 500 a month were never expended in the expenses of the charity, but that possibly the expenses might have been about Rs. 166 a month, and he held that the villages were only subject to a charge of Rs. 130 a month for the charity. His words are:—"I think it may be taken that the income of the villages in the *bhentnama* is subject to a charge of Rs. 130 a month for charity at Benares." He further found that the proportionate part of the charge, attributable to the village of Gauri, was a sum of Rs. 133-5-0 yearly. Accordingly, he gave a decree for this amount.

The plaintiffs appellants appeal against the decree contending that the village of Gauri was endowed property, and that upon the true construction of the *bhentnama* the corpus of the villages should have been held to be dedicated, and also relying on other grounds which it is unnecessary here to refer to.

Mr. *Chaudhri* on behalf of the respondent, supporting an objection filed under section 561 of the Code of Civil Procedure, contended that there was no valid endowment at all, the

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purposes of the trust being too indefinite and vague, and also that if the endowment was valid it was never acted on. He further objected to the form of the decree.

As to the first point raised by him, namely, that the trust could not be enforced, that the words translated "charitable purposes" are too vague and indefinite to create a valid trust, he relied upon the ruling of the Privy Council in the case of *Runchordas* v. *Parvatibai* (1) in which it was held that a bequest by a Hindu testator of movable property to trustees for "dharm" was void. The word "dharm," as was pointed out in that case, indisputably bears a broad signification, being so wide as to include philanthropy, or piety, or charity. In Wilson's Glossary of Judicial Terms "dharm" is defined to be "law, virtue, legal or moral duty." Their Lordships held that the objects which can be considered to be meant by that word are too vague and uncertain for the administration of them to be under any control. The dedication in the case before us is for charitable purposes *(pun)*, and for charitable purposes alone. A trust for such purposes, that is, for charity generally, will always be carried out, notwithstanding that the objects of the charity are not specifically defined. The Court can, if necessary, in such a case, settle a scheme for its proper administration. There is nothing, therefore, in the first point which has been raised before us.

The next point raised by Mr. *Chaudhri* is that the evidence fails to show that the endowment was ever acted on, and reliance is placed upon the decision in the case of *Suppammal* v. *The Collector of Tanjore* (2). It will be seen from a reference to the judgment in that case that the evidence, so far from indicating an intention to constitute a trust, went to show that the parties never intended to give effect to the provisions of the deed, in fact the Court found that a trust was not created. In the course of his judgment Shephard, J. observes:—"It is true that neglect or breach of trust (*sic*) on the part of the trustees in acting in accordance with the direction of the founder, could not have the effect of annulling a properly constituted trust." We gather from this that if the court had found that there was a

(1) (1899) I. L. R., 23 Bom., 725. (2) (1889) I. L. R., 12 Mad., 387.

properly constituted trust, the fact that the trust was not carried out would not have the effect of annulling it. We think the Court below rightly decided that the trust existed.

Then the learned advocate for the respondent contended that in view of the frame of the suit, the plaintiffs were not entitled to the decree which they obtained for payment of a proportionate part of the charge created by the deed of endowment. We think that this branch of his argument is well founded. The relief which the plaintiffs claim is that they may be put into possession of the village of Gauri. They did not implead the persons who are interested in the other villages which are subject to the trust, and as they failed to establish their title to possession, it seems to us that it was not open to them to ask the Court to apportion the charge over the several villages, and to declare the village of Gauri liable to a specific portion of that charge. If their suit had been a suit for a declaration that the village of Gauri, together with the other villages named in the *bhentnama* were charged with the monthly payments mentioned in the instrument and for an apportionment of that charge, the plaint would have assumed a different form. The prayer for any other relief which might be deemed just, contained in the plaint, did not, as has been argued, justify in our judgment, the Court below in deciding as it did that Gauri was liable to a definite portion of the charge. In view of the frame of the plaintiffs' suit, we think that it ought to have been dismissed, notwithstanding that the plaintiffs may be able to establish that the village of Gauri is subject to a charge of Rs. 500 a month, for the charitable purposes mentioned in the trust deed. It will be open to the plaintiffs to institute a suit in the proper form.

We dismiss the appeal, set aside the decree of the Court below and dismiss the plaintiffs' suit. As the sole defence set up by the defendant was that the property was not dedicated, and as he has maintained this defence in his objection, we think that in the Court below the parties should abide their own costs. We now so order. We give the defendant respondent the costs of this appeal. We give no costs of the objection.

Appeal dismissed.